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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
9

10 In the Matter of the Application of:

11 **Shawnee A., Applicant, on behalf of Juliana A.**

12 Application No. 643155

Precedent Decision No. 02-01

13 A hearing on this application was held on June 11, 2002, in Red Bluff, California, by
14 Christina M. Aceituno, Hearing Officer, California Victim Compensation and Government Claims
15 Board (Board).

16 The applicant, Shawnee A., attended this hearing and testified under oath.

17 The hearing was closed to the public under Government Code section 13963.1.

18 **Claim History**

19 The application for Victim Compensation Program (program) assistance was received
20 March 26, 2001. This application arose from allegations of neglect and an incident of lewd and
21 lascivious conduct. The applicant requested assistance with mental health expenses. As of this time,
22 no bills have been submitted. The application was recommended for denial on the July 18, 2001,
23 consent agenda and a timely appeal was filed.

24 **Summary of Issues**

25 Program staff recommended denial of this application because staff did not find a
26 preponderance of evidence that Juliana A. was a victim of a qualifying crime.
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Findings of Fact

According to the application, Juliana (date of birth November 9, 1992) was a victim of neglect and sexual assault by the boyfriend of her biological mother.¹ Shawnee A. is Juliana's adopted mother. The application noted that the crime occurred on August 3rd and August 5th of 1995 and was reported to the Reno Police Department and the Washoe County Child Protective Services Agency (CPS). Shawnee A. noted on the application that Juliana was placed with CPS in Reno. She also noted that "we have never known exactly what happened." She identified the suspects as Juliana's biological mother, Nicole C., and her boyfriend, known only as Gino.

The August 16, 1995, crime report received in connection with this application, documented allegations of false imprisonment on August 16, 1995. Allegedly, Gino held Nicole C. in his car while the couple argued. During the course of the argument, the suspect, Dennis Freeman, aka "Gino," told Nicole C. that he had molested Nicole C.'s two daughters, Juliana and Juliana's sister. Nicole C. told officers that the children were having nightmares making Nicole C. believe they had been molested. No crime report or CPS report was taken regarding the allegations of molestation. Nicole C. was later arrested on a warrant issued in Lassen County, California, on unrelated charges. In about 1996, Juliana was placed in foster care with Shawnee A.

According to a letter dated June 25, 2001, Carolyn Doty-Johnson, MFCC, stated that Juliana has had recurrent memories of molest by different adults when she was a toddler. Juliana was hospitalized at age 8 (December 2000) during which time she disclosed incidents of molest.² Ms. Doty-Johnson opined that "children like Juliana who have been exposed to sexual trauma on a consistent basis since infancy develop an unusually high interest in sex not normal for her developmental age." She continued that Juliana has exhibited behaviors since age four that are "precociously sexual." This letter was written to help justify treatment on the previous crime of physical abuse. Shawnee A. stated that as Juliana grew older and her sexualized behavior became

¹ No other applications have been filed in connection with this crime. However, a previous application (number 438482) was filed by Shawnee A. for Juliana A. as a result of a corporal injury to a child, Penal Code section 273d, perpetrated by Juliana's biological father. Medical bills totaling \$7,447.33 and mental health counseling totaling \$8,500 have been paid in connection with this application. Ms. Doty-Johnson provided virtually all the mental health counseling as a result of this prior crime.

² Ms. Doty-Johnson's letter does not specify the nature of the molestation.

1 more problematic, combined with her disclosures during out-patient and in-patient treatment, it
2 became clear that Juliana was also a victim of child molestation perpetrated by a man named Gino.

3 According to a letter dated June 10, 2002, Ms. Doty-Johnson stated that she has been seeing
4 10-year old Juliana since she was four years old. She stated that she has been treating Juliana for
5 symptoms of physical abuse and neglect by her biological father. Ms. Doty-Johnson also stated that
6 she has begun to address Juliana's inappropriate sexual behavior and responses at home and at school.

7 Shawnee A. testified that she was granted custody of Juliana as a foster child in about 1995.
8 She stated that she adopted Juliana in about 1997. She testified that she began seeing inappropriate
9 sexual behavior and comments shortly after Juliana came to Shawnee A.'s household. At that time
10 Juliana was about four years old. She stated that the behaviors were so objectionable that Juliana was
11 expelled from her day care center. As an example, Shawnee A. testified that Juliana used a vacuum
12 cleaner hose to imitate penetration on herself and other children.

13 Shawnee A. had previously provided foster care for several children ranging from ages one
14 to twelve. She stated in that capacity, she was required to report child abuse and molest. Shawnee A.
15 also has an educational background in psychology and has worked as an intern under licensed
16 therapists and received training in physical and sexual abuse. Shawnee A. testified that because of her
17 training, her personal history and her intuition, she believed that Juliana demonstrated behaviors that
18 are consistent with a child who has been molested.

19 Shawnee testified that over the years, Juliana has talked about memories of the time in Reno
20 and memories of "Gino." She has not disclosed specific details of molest or sexual assault; however,
21 she was able to recall being in a motel room with her biological mother and Gino. Juliana described
22 Gino as a "bad person," that he was mean to her mother and said that she was afraid of him. Shawnee
23 stated that Juliana has been doing badly in school for some time. She exhibits symptoms of fetal
24 alcohol syndrome and has been diagnosed with attention deficit disorder (ADD).

25 26 **Determination of Issues**

27 The Board shall approve an application for assistance if a preponderance of the evidence
28 shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
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1 (Gov. Code, § 13964(a).) A crime is a qualifying crime if it results in death, physical injury or threat
2 of physical injury. Injury includes emotional injury if that injury is incurred by a victim who also
3 sustains physical injury or the threat of physical injury. (Gov. Code, § 13960(b)(1); Cal. Code Regs.,
4 tit. 2, § 649(a)(18).)³ The applicant has the burden of proving all issues necessary to establish
5 eligibility by a preponderance of evidence. (Reg. § 647.32.)

6 A victim of specifically enumerated crimes, including Penal Code section 288 [lewd or
7 lascivious acts with a child], who sustained emotional injury is presumed to have sustained physical
8 injury. (Gov. Code, § 13960(b)(1).) It is a violation of Penal Code section 288(a) to willfully and
9 lewdly commit any lewd or lascivious act upon the body of a child under age 14 with the intent of
10 arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator.

11 Several factors must be considered evidence of a child physical or sexual abuse qualifying
12 crime, including: medical or physical evidence consistent with sexual or physical abuse; a report from
13 law enforcement or a child protective services agency concluding that sexual or physical abuse
14 occurred; a credible witness corroborated sexual abuse; and criminal charges of sexual or physical
15 abuse are filed. (Reg. § 654.2(a).)

16 Several factors may be considered evidence of child sexual abuse, including: a mental health
17 evaluation concluding that sexual or physical abuse occurred; the child victim's statement to law
18 enforcement or a child protective services agency; and evidence of behavior consistent to sexual or
19 physical abuse. (Reg. § 654.2(b).)

20 None of the factors that must be considered as evidence of child sexual abuse are present in
21 this case. Two of the factors that may be considered as evidence are present. Juliana has disclosed in
22 treatment that "Gino" molested her but she has not been more specific about exactly how she was
23 touched or assaulted. In addition, as early as age four Juliana has mimicked sexual behavior, including
24 vaginal penetration. Ms. Doty-Johnson concluded that, based on Juliana's symptoms, behaviors, and
25 disclosures, she was a victim of child molest. In addition, both Ms. Doty-Johnson and Shawnee A.
26 have observed inappropriate sexualized behavior that is consistent with those found in a sexual abuse
27 victim. When weighing the evidence, there is a preponderance of evidence that Gino molested Juliana

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29 ³ All citations to regulations are to California Code of Regulations, title 2.

1 in 1995. There is a preponderance of evidence that Juliana is a victim of a qualifying crime of lewd
2 and lascivious conduct.

3 **Order**

4 The application is eligible. The applicant is eligible for program assistance on behalf of the
5 victim.

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9 Date: July 22, 2002

10 CHRISTINA M. ACEITUNO
11 Hearing Officer
12 California Victim Compensation and
13 Government Claims Board
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13 Applications No. 643155
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Notice of Decision

15 On September 27, 2002, the California Victim Compensation and Government Claims
16 Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-
17 referenced matter. The Decision became effective on September 27, 2002.
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19 Date: October 2, 2002

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21 CATHERINE CLOSE
22 Chief Counsel
23 California Victim Compensation and
24 Government Claims Board
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